

(2016) 01 BOM CK 0032

In the Bombay High Court

Case No : Criminal Revision Application Nos. 172 of 2014 along with Criminal Revision Application Nos. 134 of 2014

Dhananjay Ramkrishna Gaikwad and others

APPELLANT

Vs

Sunanda Dhananjay Gaikwad and others

RESPONDENT

Date of Decision : 18-01-2016

Acts Referred:

Citation : (2016) 3 AICLR 186 : (2016) 1 AIRBomRCri 590 : (2016) ALLMRCri 2291 : (2016) 2 BomCR(Cri) 176 : (2016) 2 CriCC 797 : (2016) CriLJ 1482 : (2016) 2 HLR 733 : (2016) 3 JCC 1769 : (2016) 4 MhLJCrI 78 : (2016) 3 RCRCivil 50 : (2016) 2 RCRCriminal 898

Hon'ble Judges : Dr. Shalini Phansalkar-Joshi, J.

Bench : Single Bench

Advocate : Rameshwar N. Gite, Advocate, D.R. More, A.P.P, for the Respondent

Final Decision : Dismissed

Judgement

Dr. Shalini Phansalkar-Joshi, J. (Oral) - This Revision Application is preferred challenging the Judgment and Order dated 15th February 2014 of Additional Sessions Judge, Niphad, Dist. Nashik, in Criminal Appeal No.54 of 2011, thereby dismissing the said Appeal, which was preferred against the order of protection granted to Respondent Nos. 1 and 2, under Section 18 of Protection of Women from Domestic Violence Act.

2. Facts of the Revisions are to the effect that Respondent No.1 is legally wedded wife of Applicant No.1. Respondent No. 2 is born out of the wed-lock. The marriage of Respondent No.1 and Applicant No. 1 was solemnized on 3rd March 2002. Few months thereafter, she was constrained to leave the house on account of domestic violence. Hence, after issuing a notice dated 6th December 2003, she filed Criminal Miscellaneous Application No.28 of 2005 for maintenance, under Section 125 of Cr.P.C. In the said application, the amicable settlement took place on 5th March 2006 and she went to co-habit with Applicant No.1. Thereafter again subjecting her to harassment and cruelty, she was driven out of

the house within three months. Meanwhile, she had also filed a criminal case against Applicant No.1 and his family members for the offence punishable under Section 498-A r/w. 34 of IPC. In the said case, on 4th July 2009, Applicants were acquitted. Few months thereafter, on 18th January 2010, Respondent No.1 filed Criminal Miscellaneous Application No.19 of 2010 before the Trial Court seeking various reliefs of protection and residence in the shared household, as contemplated under the Domestic Violence Act.

3. The said application was resisted by the present Applicants contending, inter alia, that there was no domestic relationship in existence at the time of filing the application and there was also no substance in the contention of Respondent No.1 that she was subjected to any domestic violence. It was urged that the criminal case filed by her against the present Applicants has ended into acquittal, thereby negating her case that she was subjected to any harassment or illtreatment. Further, it was denied that, as a result of amicable settlement in Criminal Miscellaneous Application for maintenance bearing No.28 of 2005, she has resumed co-habitation and hence it was urged that, as domestic relationship itself is not in existence and the application is filed only as a counter blast to the acquittal of the Applicants in the case filed by her under Section 498-A r/w. 34 of IPC, the application deserves to be dismissed.

4. In support of their respective contentions, Respondent No.1 and present Applicant No.1 examined themselves and on appreciation of their evidence and keeping in mind the provisions of Domestic Violence Act, the Trial Court passed a protection order in favour of Respondent No.1, restraining the Applicants from subjecting her to any sort of domestic violence and further restraining the present Applicants from restraining Respondent No.1 from residing in the shared household and also from driving her out of the said house.

5. The Applicants challenged the said order before the Appellate Court, however, as referred above, the Appellate Court dismissed their Appeal. In this Revision Application, the first point raised by learned counsel for the Applicants is that, at the relevant time, when application under the provisions of Domestic Violence Act was filed before the Trial Court, the domestic relationship was not in existence at all, as parties were residing separately since the year 2003 i.e. within few months or a year after the marriage.

6. In support of his submissions, learned counsel for the Applicants has relied upon the definition of the "Domestic Relationship", as given in Section 2(f), the definition of "Aggrieved Person", as given in Section 2(a), and the definition of "Shared Household", as given in Section 2(s) of Protection of Women from Domestic Violence Act, 2005. According to these definitions, "Aggrieved Person" means, "any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent". Whereas, the term "Domestic Relationship" necessarily contemplates "a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related

by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family". The term "Shared Household" means, "a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household".

7. According to learned counsel for the Applicants, therefore, as Respondent No.1 has left house of the Applicants in the year 2003 itself, there was no domestic relationship in existence within the meaning of the above referred definitions of "Domestic Relationship", "Aggrieved Women" and "Shared Household". Hence, her application itself was not maintainable.

8. However, needless to state, that, this very argument itself is misconceived, because the wording of "Aggrieved Person", as laid down in Section 2(a) clearly provided that any woman, who is or has been in domestic relationship with the respondent. The definition of "Domestic Relationship" also means relationship between two persons, who live or have, at any point of time, lived together in shared household. The definition of "Shared Household" also means where the person aggrieved lives or at any stage has lived in a domestic relationship. Therefore, none of the definitions contemplate that on the date of filing such application for the reliefs under Protection of Women from Domestic Violence Act, the parties should be actually residing or living together. The very words "has lived together at any point of time" necessarily cover even the past co-habitation or past living together. Otherwise, these words would not have appeared in the definition. Giving any other interpretation would be making these words nugatory. So till the time the marital tie subsists and the party, at any point of time, had lived together, the application or proceedings under Protection of Women from Domestic Violence Act can survive and are very much maintainable so as to grant the necessary relief.

9. As regards the authorities relied upon by learned counsel for the Applicants, on facts, all these authorities are totally distinguishable. For e.g. in Jayesh Uttamrao Khairnar and Ors. v. State of Maharashtra, 2010 (3) Bom.C.R. (Cri.) 939, in view of the divorce between the parties, it was held that on the date of filing application, there was no domestic relationship in existence. Whereas, in Kishor Shrirampant Kale v. Shalini Kishor Kale and Ors., 2010 (3) Bom.C.R. (Cri.) 694, there was not a single averment in the complaint showing that husband has committed any act or omission by his conduct to deprive the wife of her enjoyment of shared household or any way restricted her access thereto and hence it was held that the Petition was not maintainable. As regards Sejal

Dharmesh Ved v. The State of Maharashtra and Ors., 2014 ALL MR (Cri) 636, the wife has returned from U.S.A. and lived in India for one year, during which period there was no co-habitation or living together. Hence, it was held that her application seeking relief under Protection of Women from Domestic Violence Act cannot be maintainable. In the next authority of Amitabh Upadhyay R.P. Upadhyay v. State of Maharashtra and Anr., 2014 (4) Bom. C.R.(Cri.) 545 also, the parties had obtained the divorce and, therefore, it was held that domestic relationship was not proved.

10. The point, therefore, to be stressed is that all the authorities, which are relied upon by learned counsel for the Applicants, are distinguishable on the facts. Conversely, provisions of Protection of Women from Domestic Violence Act themselves are so clear that they do not call for any interpretation as they necessarily imply that even if the parties had lived together at any point of time and not necessarily at the time of filing the application, the provisions of Protection of Women from Domestic Violence Act can be invoked. In the authority of our own Bharati N. v. Ravi, 2010 (3) BOM Cri. 871, wherein, the words "has been" or "have been" interpreted, it is categorically held that the words "has been" and "have been" have been used for the purpose of showing the past relationship or experience between the concerned parties. The said words have been used purposefully as the said Act has been enacted to protect a woman from domestic violence and, therefore, there cannot be any fitter, which can come in the way by interpreting the provisions in a manner to mean that unless the domestic relationship continues on the date of application, the provisions of the said Act cannot be invoked. It was further held that to interpret the said provisions so as to mean that only subsisting domestic relationships are covered would result in terming the provisions of the Act autos. In short, therefore, all the contentions advanced by learned counsel for the Applicants on this aspect are legally not tenable and hence are required to be rejected.

11. The second contention advanced is that learned Trial Court has not appreciated the evidence of the Applicant No.1 and only relying upon the legal provisions granted the reliefs, as claimed by Respondent No.1. However, perusal of the impugned judgment passed by the Trial Court reflects that the Trial Court has considered the evidence of the Applicants in Para No.16. Moreover, the facts of the case are so eloquent that Respondent No.1 has, in the year 2004 itself, filed F.I.R. for harassment and cruelty under Section 498-A of IPC. She has filed Criminal Miscellaneous Application for maintenance under Section 125 of Cr.P.C. in the year 2005. For some days they stayed together, but it was of no use and again she was driven out of the house and constrained to reside separately. In such situation, it has to be held that there was more than sufficient evidence on record before the Trial Court to grant the protection order in favour of Respondent No.1, restraining Applicants from subjecting her to domestic violence and also the residence order, as claimed by her.

12. The impugned order passed by the Trial Court and confirmed in Appeal, thus

being absolutely legal and valid, does not call for any interference. The Revision Application hence stands dismissed.

13. In view of dismissal of Revision Application, Criminal Application No.134 of 2014, does not survive and the same is disposed of accordingly.